CORRESPONDENCE

AND

REMARKS ON TWO OCCASIONS

IN THE

SENATE OF VIRGINIA,

ON THE

SUBJECT OF MARTIAL LAW AND ARRESTS

AND

CONFINEMENT OF CIVILIANS

BY

MILITARY ORDERS.

RICHMOND:
JAMES E. GOODE, PRINTER,
1866.

CORRESPONDENCE.

PETERSBURG, VA., December 23, 1862.

PRESIDENT JEFFERSON DAVIS,

Richmond, Va.:

SIR,

As a citizen and a representative, I write you this letter.

This has been as quiet a people, as law abiding and public spirited as any in the states which have separated from the United States. This people, or rather a small portion, at the time, (as the case then was with many,) not understanding martial law, applied months ago, and you acceded to their solicitation, to declare martial law; you then being authorized by act of congress to suspend the writ of *habeas corpus.* What the great and wide difference is between a temporary denial of the writ, and a declaration of martial law, (if there was any competent authority to declare the code martial supreme,) for the time, I will not stop to enquire. Suffice it to say, that the act of congress which authorized the suspension of the privilege of the writ has expired. The privilege of the writ is being exercised plentifully, and by judicial decision, bountifully, in this community, which has been no little annoyed, not only by the arrests of civilians by military orders, but by the trials of such persons by courts martial—some of whom have been subjected to, not only "unusual," but even disgusting punishment. Midway the career of those court martial usurpations and excesses, which were disaffecting very many more persons than they attempted to correct, believing, as I did, that concessions to the military power are far more dangerous to freedom, which is the great cause of the south, than resistance of its encroachments, even *flagrante bello*, and fearing, as I did, that we were tending too much to resemble Lincolndom, I consented to become counsel to apply to the civil judge, to take out of confinement by military orders, and out of the clutches of the findings of courts martial, several civilians who had been arrested, and so tried, and two of whom in whose behalf I interposed, were actually undergoing punish-

ment. About that time, I received an official copy of an order of November 22, 1862, from General Cooper, adjutant and inspector, to General French, to the effect that civilians are not lawfully triable by courts martial, and that such authority had ceased, inasmuch as the act authorizing your proclamation of martial law, as you, I doubt not, patriotically supposed, had "expired by the limitation contained in the act of congress, approved April 19, 1862." If the order had ended there, all would have been plain enough. The citizens would then have been officially advised that the army was going to manage itself without interfering with the citizens not belonging to it and not interfering with it within its camps, and that even this class of interferers would be arrested only to be promptly passed to the civil tribunals to be dealt with accordingly as the law of the land directs. But not so. That order of November 22 proceeds: "In the meantime, although the power to arrest offenders continues in the provost marshal till the order" (general order No. 11) "is revoked, action under the fourth paragraph requiring them to be punished by sentence of a court martial should be suspended until more definite instructions are communicated."

Now, sir, who knows what is the condition we are left in. If those "more definite instructions" have been rendered, we are not aware of it. We trust you will cause us to be relieved of the perplexities of a quasi-condition of "martial law," and also, we trust that you will direct in the rendering of the promised "more definite instructions," that the military authorities be made to understand that no freeman shall be arrested and imprisoned who is not in or of the army, except by "the lawful judgment of his equals or by the law of the land;" so that if any civilian is arrested by military orders, it shall only be (not to be indefinitely confined without a trial but—) to be at once delivered over to the civil magistrate.

I have the honor to be, president,

Your obedient servant,

R. R. COLLIER.

(Reply.)

CONFEDERATE STATES OF AMERICA,
WAR DEPARTMENT, Richmond, Va., Dec. 30, 1862.

HON. R. R. COLLIER, *Petersburg, Va.:*

SIR,

In the absence of the president, your letter to him of the 23d instant has been referred to this department for answer; and you are respectfully informed that an additional person has been appointed to examine all prisoners, and has instructions to discharge all those who are illegally detained.

Very respectfully,

Your obedient servant,

JAMES A. SEDDON,
Secretary of War.

PETERSBURG, VA., January 5th, 1863.

HON. JAMES A. SEDDON,

Secretary of War, Richmond, Va.:

SIR,

Your letter of the 30th ultimo, in the absence of the president, in reply to mine of the 23d, has been received and considered. As the subject of this correspondence is one of practical interest and grave import, I beg to extend the correspondence a little. I am advised by your letter that "an additional person" has been appointed, with instructions to discharge persons illegally restrained of their personal liberty. It is material to the supremacy of the civil authority (to which I am pleased to perceive the administration, after a long interval of wide departure, is returning with laudable defference to that fundamental policy,) to inquire and ascertain what are the functions that officer (who, I suppose, is additional to the provost marshal,) is to fulfill; and whether the office is civil or military; and if the former, by authority of what law he is appointed and his office was created? It will depend very much, if not entirely, I conceive, upon his office being civil or military, whether he will consider and determine any one to be illegally restrained, whose confinement was ordered by a military commander. If the office is military, it will not avail to separate these jurisdictions; that separation is the great object. If the office is a civil one, then I respectfully suggest that, besides the *question* of competent authority in the executive to fill it, the appointee would be a supernumerary, whilst the privilege of the writ of *habeas corpus* is not suspended. Whilst the privilege of the writ is not withheld by legislation, the imprisoned civilian has access by the writ to the civil courts and judges. When the writ is withheld for a limited time by legislative denial of it, it seems to me, and I submit, that during that time no person can be clothed with the judicial function to interpose between the prisoner and the military force confining him, except by the legislature of the Confederate States. And I submit that it is not competent for congress, as it proposes by the act of October 1862, to do, to clothe the president with authority to appoint "additional persons" and invest them with

partial and incomplete judicial authority, without the advice and consent of the senate to such appointments.

I do not doubt that you and the president appreciate the views I have had the honor to invite your attention to; and I beg to explain the remark made in the beginning of this letter, that the administration is returning to the sound and conservative policy of keeping the civil above the military power, by reminding you of the fact that prior to the 15th of November last, when, upon an appeal presented by me to himself, the president ordered a civilian to be released, who had been tried and condemned by a court martial, that usurping practice had extensively obtained a firm footing and a formidable front. I trust that the remnant of the encroachments on civil liberty, yet lingering amongst us, to the scandal of free government, to wit: that civilians may be indefinitely confined by military orders, will be diminished, and made beautifully less, to the just extent that the civilian who offends against the military regulations, or even against the order and police of the camp, shall be required to be forthwith delivered over to the civil magistrate. If the civil law does not already provide against any such offence, the plain remedy is that the punitive scope of the civil law should be enlarged.

I have the honor to be, sir,

Your obedient servant,

R. R. COLLIER.

In the Senate, January 12, 1863.

Mr. President:

I ask to be indulged in a very few remarks in proposing these resolutions. The consideration of them, in an appropriate extent of their discussion, would bring in review the whole subject of martial law. Martial law! It is a subject, I venture to say, that is as little understood, as it is much canvassed. But I do not propose to cover the whole subject in the present discussion.

The immediate cause of the propounding of this subject for the consideration of the general assembly, is that some of our citizens—some of my constituents—I know not how many of our citizens, in no way attached to the army, and not subject to trial by court martial—in no way, by any law, amenable to the articles of war—are under arrest and in jails and guard houses, not by civil precept, but by military orders. It seems to me that all such ought to be discharged or delivered over to the civil magistrate. As a friend to the army, if no other parties were interested, I would commend that course.

I am happy to announce to the senate, that by some instrumentality of my own, the confederate government, by its executive authority, has retired from the high ground of usurped power, which for more than twelve months it had freely exercised, of subjecting civilians to trial by courts martial. On the 22d of November 1862, an order was issued by the adjutant and inspector general of the confederate forces, to the effect that, though civilians may be arrested and confined, they cannot be tried by the court martial—that tribunal being without competent authority. The principal reason on which, in my correspondence with the confederate authorities, I poised the defence of the citizens not in the army, against the humiliation of punishment by martial law, is that the military or martial law is not a code of general application, and that therefore civilians are not presumed to have knowledge of it, and cannot justly be made amenable to it. Its penalties are arbitrary, and not ascertained and notorious, as are those of the civil law. The articles of war and the military regulations conformable thereto, which constitute the only martial law that does or can constitutionally exist in our system, are made for the government of the army and the militia also when

in actual service; and all in the army do willingly or must coercively assent or submit to them. They are periodically published to the soldiers, in camp and garrison, that they shall know them and be obedient. The civilians of right say *in hæc vincula, non veni.* Why, sir, it is only by special provision of law that men not belonging to the army, but so far attached to it as to be laborers on the fortifications, are made liable to the articles of war.

Another view was urged in my correspondence with the authorities, which may be mentioned as important. It is that as the power to make rules for the regulation and government of the land and naval forces of the Confederate States is conferred on and confined to congress, the executive cannot enlarge them, when they have been legislatively prescribed. It has been so in Great Britain for two centuries. It would be passing strange if it were not so in this system of ours, which is much freer than theirs.

But, Mr. President, notwithstanding the concession from the adjutant general's office, it is yet claimed by the confederate authorities that they have the right to imprison civilians—to imprison them indefinitely. Then, I beg to institute the enquiry, by what legislation or grant of power to the executive?

The language of that order of the 22d of November, on this head, is: "when citizens of the Confederacy offend against military rules and orders, the only remedy is to place them in confinement, or send them beyond the limits of the military command."

It is at once admitted that civilians offending against discipline and military orders, when the soldiers are in camp or on the march, may be arrested and restrained as long as the necessity exists so to prevent the mischief. It is the claim of right that is being exercised to confine civilians, by committing them to a guard-house or a jail, confessedly without authority to try them, and to keep them there at the will of the military commander who ordered the arrest, that the resolutions propose to resist. I apprehend that the proper course in such cases is to pass the offender over, as expeditiously as may be, to the civil magistrate. Anything beyond is an exercise without the authority of law, of the physical force of the army in the field. Yield to such exercises of martial force, and, unless all history of the past misapplies to the present times, the supremacy of the martial over the civil law, will before long be established.

The question I seek to have answered is, what law is the exercise of the power to confine a civilian at the will of the military commander

who ordered his arrest, founded on or inferred from? I might detain the senate on this topic to show that there is nothing in the articles of war to warrant it. But it shall suffice to be said that they who claim the power ought to show the law. I challenge its production. Let it be remembered that the act of congress by which the president of the Confederate States was authorized to suspend the privilege of the writ of *habeas corpus* expired thirty days after the last meeting of congress.

On the 13th October 1862, another law, giving authority to the president to suspend the writ in any locality, was enacted by the congress with limitation to expire at the end of thirty days after the then next, but now current session of the congress. It is a further fact to be remembered and considered, that though under this last act, the writ is not suspended in this state, it is suspended in certain parts of other states. It is thus made very convenient to evade that provision of the confederate constitution, which is that the accused shall be tried speedily and publicly in the state and district in which it is alleged he should be subjected to criminal prosecution. He is arrested in this and transported into another state where liberty is eclipsed by the denial of the writ. But the absence of a suspension of the writ, as yet, in this state, is not the most pertinent and imperative consideration going to demonstrate that civilians cannot be lawfully imprisoned indefiditely by military orders. It is utterly incompatible with constitutional republican government, that the martial law enacted to govern the army should be extended even by the law-making power, much less by the chief magistrate, over a whole people, or even the citizens out of the army in any locality.

I know, sir, it may be said, as it has been said, that it is not enough that the offending civilian be delivered to the civil tribunals, because for his conduct he may not be punishable by the civil law. The civil code may be defective, is my reply; and for the sake of the argument, I will admit it is. Still, that being so, the civilian may be deterred from the mischief of offending against the military rules for the discipline and order of the army, without being subjected to confinement by military order. On this vital point I beg to present Mr. Jefferson's language. It is true, he was opposing the grant of power to congress to suspend the privilege of the writ, yet it is plain that now when the privilege of the writ is not suspended, his reason, as against exercising the power, applies as clearly as if the power had not been granted to suspend it.

In 1781, Mr. J. said: "Why suspend the *habeas corpus* in insurrections and rebellions (or invasions)? The parties who may be arrested,

may be charged instantly with a well defined crime—of course, the judge will remand him. If the public safety requires that the government should have a man imprisoned on less probable testimony in those than in other emergencies, let him be taken and tried, retaken and retried, while the necessity continues, only giving him redress against the government for damages. Examine the history of England. See how few of the cases of the suspensions of the writ have been worthy of the suspension. They have been either real treason, where the parties might as well have been charged at once, or sham plots, where it was shameful they should ever have been suspected. Yet, for the few cases wherein the suspension has done real good, that operation is now become habitual, and the minds of the nation almost prepared to live under its constant suspension."

It is not for the suggestion that the medicine which ought only to be administered in extreme cases, is apt to become the daily dose, valuable as that suggestion is, that I cite the passage—it is to apply the other parts. Let it be observed that the privilege of the writ is not now suspended in this state. Then, let the civilian who offends against the military rule be taken and given over to the civil magistrate. In most cases he will be chargeable with an offence against the civil code, and though released from military orders and custody, he will be, according to the degree of his offence, remanded for trial before the civil courts, or be recognized to appear before the grand jury. Even in the matter of selling liquor to the soldiers in their camps, which is the offence of most frequent recurrence, the civilian arrested and delivered over can be recognized, after he has been subjected to the perplexity and expense of prosecuting his writ of *habeas corpus*. He will not be apt to repeat the offence, but will cease his mischief. If not, the arm of the military power—the physical force of the army in the field—is strong enough to retake him, and so he must be retried. He must have another writ sued out for his relief from military rule, however lawless in confining him. Perplexity and expense, it is pretty certain, will now, if not before, have accumulated enough to make him desist. And so the same operation can be brought to bear on him to constrain him to desist from any other mischief to the discipline and order and efficiency of the army, although his acts of whatever kind alleged to be an offence against military rules and orders, be not punishable by the civil courts.

Is not that wiser and more consistent with our system which ordains that the civil power shall be in the ascendant, than that the martial law should be extended over the whole state or over the citizens out of the

army in any locality, even by the legislative authority of the Confederate States? Nay, sir, I will put the question in its substance, more exactly to suit the tendency of the times. Is not the course suggested by Mr. Jefferson, infinitely better in all aspects and directions, than that a usurped power shall be exercised over any citizen, through and by an extension to any extent, of the stern martial law, by an edict of the executive or the orders of his subordinates? As Blackstone says, it is alone for the legislature to determine when the public safety demands that the citizen shall be restrained of his precious personal liberty. As Burke says, public liberty is in greatest peril when it is nibbled away for expedients and by parts. We have here what those great men reprobated in monarchical England, unlawful arrests and unlimited detention of citizens by military orders, for the contemplation of republican statesmen.

With reference to the third resolution, I will remind the senate that the constitution of our state declares that the privilege of the writ of *habeas corpus* shall not in any case be suspended. Can there be stronger reason—any more urgent cause—for suspending the privilege of the writ in the confederate government, than in the state? If not, why should the authority to suspend have been granted to congress; or, having been granted, why should it be exercised, if it was wise to withhold the power to suspend from the state government?

Mr. President, I trust and expect that every member of this senate of the Old Dominion, will, when he gives his vote, come to the rescue of our fellow-citizens, be they few or many or but one, who are imprisoned for undetermined periods by a power which confesses itself not competent to try them.

Extract from Senate Journal, Monday, January 13, 1863, *pp.* 191–2.

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Mr. Collier offered the following joint resolutions, which on his motion (the rules being suspended therefor), were taken up:

Resolved by the general assembly of Virginia, That the governor be and he is hereby authorized and requested to enquire of the president of the Confederate States, if any, and what citizens of this state, who are not enlisted soldiers nor any way attached to the army, and for what offences respectively, are by military orders restrained of their personal liberty, and how confined and where, and whether merely by arrest and custody or pursuant to trials and findings by courts martial; and that the governor report to the general assembly, as soon as practicable, whatever correspondence he may have with any confederate official in the military or civil service on this subject.

Resolved, That in case any such civilians are so restrained of their liberty, and unless their release or transfer to the civil magistrate be promised by the president to be ordered without delay, the attorney general of this state be and he is hereby instructed to prosecute writs of *habeas corpus* in their behalf severally, to the end that they may be released from the military custody and either discharged or delivered over to the civil magistrate to have speedy and customary trials.

Resolved, That the senators from this state in the confederate congress be instructed, and the representatives requested, to propose in their respective houses, and to insist on a repeal of any legislation by the confederate congress, if any is in force at the time, which has for its object a prospective suspension of the privilege of the writ of *habeas corpus*, and to oppose the passage of any bill or resolution or other proceeding, which may have for its purpose or effect any general or partial suspension of that invaluable privilege.

On motion of Mr. Armstrong, the question was put on the adoption of the first resolution, and determined in the affirmative—ayes 25; noes 3.

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The other two resolutions were afterwards referred to the committee on confederate relations.

REMARKS

BY MR. COLLIER, SENATOR FROM PETERSBURG,

DELIVERED IN THE SENATE, ON MILITARY ARRESTS WITHOUT WARRANTS, AND IMPRISONMENT WITHOUT TRIALS, OF CIVILIANS; WHEN THE PREFIXED RESOLUTIONS ON SIXTEENTH OF MARCH 1863, WERE UNDER CONSIDERATION.

Mr. President and Senators:

Less than two years ago this people, under the federal Union, was the most prosperous, and was rapidly getting to be the most powerful, on earth. The scene is changed. Though the change that has come over us is, for the present, melancholy, I have no doubt that the Divine mercy in milder aspect sits behind the mountain of woe that has, in that short time, been raised above the surface of the sparkling sea of human wrath. Why has that change been wrought? Only because men will not listen with credulity or credence to the lessons of wisdom that point to peace and prosperity; but they prefer to rush with vehemence into the arms of the phantom which leads to destruction by the lurid light of its deplorable glories. Let me not be misunderstood. It is not our fault, of which others have any right to complain. So far as we are at fault for the war, that fault consists in our having made too many concessions, on the heels of which, aggressions ensued in quick succession. Those concessions were on the subject of our slave property. They were vital concessions which I forbear to refer to in this discussion, because I expect to refer to them at another time. It is certainly not our fault that the public enemy have cut asunder all the slender links that bind humanity together in the rude conflicts of war—a savage policy that of theirs, which has driven our compassionate president, in some sort, to a terrible, but just retaliation. But, again, I must forbear to trace that topic, and stop it to put the enquiry, what does it become us to do? The response is on every tongue, happily, to defend our Confederacy with the utmost energy, of which its whole resources are ca-

pable; and especially now when our army in the field was never before superior in military prowess and moral vigor and skill in conduct by its generals. Nor is that all we are called on to do. Nor is it the most we should accomplish, and can, without endangering that prime object. It is no less our duty, whilst we are unitedly fighting for liberty against the public enemy, to defend our ancient liberties and indispensable rights at home. It becomes us, scarcely less urgently, to see to it that the fundamentals of freedom be not infringed, much less frustrated. Let not the substantive elements of liberty be fused in the crucible of civil commotion.

On that view of the subject, I have two observations to make, and to which, I invite a candid and intelligent attention. In the first place, I have to observe that I proposed resolutions in May last, speaking no reluctant eulogy of the confederate administration. My resolutions did not then receive, in the senate, the cordial concurrence which they would now command, if it be true, as I suppose it is, that some senators are averse to the resolutions which I am now striving to attract their attention to; because, as they think whilst my purpose is not fully explained, these resolutions look to a conflict (as it is called,) with the executive administration of the confederate government. The other observation I have to make is, that these resolutions look rather to the legislative than to the executive conduct of the confederate government; and thus it will be perceived that I am not aiming at any conflict with the executive. I would admonish my country that we should not in any case be too much afraid of coming into conflicts with our honored servants to whom we delegate such high trusts. Believe me, when the truth is introduced where good intentions are entertained, and no wrong intended, the right is apt to overcome the error with which it conflicts, without producing any discord. Indeed, I will avow, besides the implied proof that will be seen as I proceed, that I am not moved to this effort, in this legislative forum, by any distrust of President Davis or Secretary Seddon. I admire them both. I prize liberty higher than either. It is not that I love Cæsar less, but Rome more.

I propose, Mr. President, in the first place, to look at the present posture of the three resolutions, (which I offered a month since,) as a business transaction. The first resolution which was adopted by the senate by an almost unanimous vote, was only for information; and, unattended by the second one which proposed to do something, the first, if carried into effect, would be a barren benevolence. The one which was adopted, seeks to know in an authentic form from the president of

the Confederate States, what civilians, citizens of Virginia, are "in durance vile" by military orders, and for what, and whether in this state or in a foreign jurisdiction. The other, and the next of the series, proposes to set in motion the legal procedures by which any such civilians, so confined, may be brought to trial. If any of them are out of the state, it is competent to the governor of the state to demand their re-delivery to this sovereign jurisdiction. But when returned to their state, nothing is proposed by the first, without the second resolution, to be done with them or for them, as nothing also is proposed by the enquiry instituted by the first resolution, to be done with or for those who may be ascertained to be in military custody within this state. Yet, the senate adopted the first, while the second still lingers. Then, as a business transaction, sensible and sure in its design, and consecutive in execution, I submit that the disposition of the two resolutions, (a disposition to which I trust the senate will not consign them, and) which I am controverting, is, no less in legislation, than in logic, incoherent and inconsequential. That disposition of them, that is to adopt one without the other, would fall short of the rights of the citizens subjected to such lawless and rough usage.

Now, Mr. President, I will suppose that the first resolution, which, upon its adoption by the senate, was regularly communicated to the house, and their concurrence invited, hangs fire in the house. Whether there is any other objection against its adoption in the house, or not, I submit that the fact that the second resolution which proposed to do something to give effect to the first, is not adopted by the senate, is enough to justify the house in neglecting or rejecting the first, in which they were invited to concur. The house could not have been reasonably expected, it seems to me, to infer that the senate would have time at this session to get the information desired by the first resolution, and then, after that, and not till then, propose the action with which the senate might determine it in their judgment to be necessary and proper to follow up, and close in upon, on getting the information. The multitudinous engagements of the confederate executive, the large number of arrests of civilians, and their scattered prisons, and the irregular manner of their arrests without due process of law, all contradict the supposition that the house ought to have been expected to make the calculation that the senate intended any thing but a call for information, without making it a basis of any further proceedings. Besides, the house may well and wisely have concluded that they would not concur in calling for the information, when

they were not advised what the senate might propose to do after getting the information. It is not usual, if admissible at all in parliamentary law, to propose, in co-ordinate branches of a legislative body, a joint call for information, without at the time suggesting the action intended to be taken by the branch initiating the call. This it should do *sua sponte* The report of the committee asking to be discharged from the further consideration of the second resolution which contains the only proposal made in the senate, of what ought to be done after getting the information, seems to me to be conclusive that the house has acted wisely in deferring their concurrence in the first; for it is thus shown that the committee of the senate disagree to the only mode of further action that has been proposed or suggested to be taken. If there was probably time enough, when the resolutions were proposed, there certainly is not now: so I invite the senate with the more earnestness to let the house know with what action it is the purpose of the senate to follow up the information the first resolution called for, when we shall have received that information. If then the house will not adopt the second resolution, and our plan of action is right and just, as time and scrutiny may show it to be, it will be their fault and not ours, that it was not adopted. Therefore it is that I ask the senate, the senate having dischargd the committee, now itself to adopt the second resolution, to the end that the house shall be advised what the senate proposes to do on getting the information which the senate, almost unanimously, by so adopting the first, decided it was due to the arrested and confined civilians, and demanded by the supremacy of the civil law, should be called for.

I will proceed now, Mr. President, to enquire very briefly, whether the action proposed by the second resolution, when the information sought by the first shall have been in authentic form furnished to the governor by the president, be expedient and just. It is that the highest law officer of the state be directed to institute proceedings and prosecute them for the relief of the confined civilians. It is not that he demand the unconditional release of all or any one of them. It is that he seek outright and in plain terms their unconditional release from military custody. The resolution therein is perceived to assume that they are not rightly confined by military orders, be they or any one, thus confined, guilty or innocent. It assumes that the military power has no competency of authority to keep a civilian in custody by a military guard or by lodgment in jail. But it does not, I repeat, direct the attorney general of the state, to demand the release of any imprisoned

citizen; and only such citizens are included in the demand which is contemplated as proper to be made, and which is impliedly asserted to be inexorable in the just exactions of the civil law that it shall be made, as are not enlisted soldiers, nor in any way attached to the army; and, hence, who are not subject to the articles of war, and not being triable by court-martial, must stay in prison without a trial or opportunity to confront their accusers. Such citizens, being civilians, are directed to have the services gratis of the law-officer of the state, to the end that for the offences for which the military power has presumed to arrest them, they shall be brought into the control of the civil authorities, to be remanded to confinement, or let to bail, according to the law of the land; and, in either alternative, to have the customary trial; unless, upon the hearing in court, or before the judge in vacation, upon the proofs, or in default of proofs, or in the absence of sufficient cause for postponing the hearing, the prisoner be found entitled to be absolutely enlarged.

But I am asked, Mr. President, why shall they or any of them have the services of the attorney general of the state? The reply I have given before, I deem worthy to be re-produced. Will not the sense of justice of a brotherhood of freemen spontaneously respond that a public injury offered to the humblest citizen, is an insult to the whole community? That is the sentiment in old England, where the right yet lingers to pass bills of attainder, whereby parliament is enabled to exercise the unquestioned and terrible power of taking a man s life, without accusation or trial, and of confiscating his estate. Should not the sentiment, than which none other of uninspired man is more benignant, prevail and be enforced in this freer system of ours? How politic, as well as just, that sentiment is, in its whole possible practical extent, may be seen in the single reflection that they who move to the rescue of the oppressed citizen to-day, may be the victim of the oppression to-morrow, if they do not break the bands that bind the first victim. This sentiment, it seemed to me in preparing the resolution, can be most appropriately enforced by the instruction proposed to the attorney general of the state. He is attached to the courts, and it is before them, or the judges in vacation, that the cases of the imprisoned civilians are to be tried, whether they be in jails in this state, or are to be restored to this from the foreign jurisdiction into which they have been lawlessly transported. It occured to me, and in examining the subject, and conferring with others on this topic, I find and have been referred to no authority or reason going to show that any executive faculty is further

requisite or suitable in this behalf, than that the governor shall make a demand for any of our civilians that may be confined beyond the limits of this state. That the governor shall thus interpose is plainly enough indicated in the tenor and by the terms of the resolutions. When they shall have been returned, or ascertained by the information sought, to be in jail here, can they. besides having already been torn from their families, and perhaps from the defence of their country, and suffered lawless oppression, be justly subjected to the expense of counsel in their liberation? It is another government that has done them wrong, by committing them without due process of law; and therefore a wrong, though they be guilty; but this they desire shall be regularly enquired into. Another government having done them the wrong—and great are the odds on the side of the state against a citizen—they have the right to look to their sovereign government to which they owe primary and in the last resort exclusive allegiance; for at least relief, if not ulterior redress.

I shall forbear, Mr. President, to say more in respect of the topics I have touched, it may be too gently. Especially do I ask attention to and consideration of the suggestions I have made why the two first resolutions should go together. I feel bound by candor to express my opinion that as the committee has asked to be discharged from the further consideration of the second resolution, the senate ought to recall the first which was communicated to the house in case the second resolution is not adopted by the senate. If the senate shall deem it proper to do that, then I will acquiesce more readily in that, to my mind, more consistent decision. Then, however much I confess I should regret it, I will have been forced to the reluctant conclusion that the senate will have shown that they do not appreciate as I do, the teachings of Blackstone, who in his dream that his country was free, almost made her free, and with which senators are as familiar as I am, when he says: "confinement of the person by secretly hurrying him to jail, when his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of force, than to bereave a man of life, or to confiscate his estate, without accusation or trial." And that is a teaching says Story, "the justice of which must be felt by all." I trust that all the members of this body will show that they feel and are alive to it in practice, as well as they understand it in theory. I trust they will show that they feel the exceeding value of personal liberty not only by being willing, as they have shown they are by voting for the first resolution, to ascertain what civilians, citizens of Virginia, are

deprived of it unlawfully by military orders, but also by voting for the second, which proposes to extend to the innocent a cheap relief; and to the guilty, as cheap an examination; whilst these, being ascertained by that examination upon the hearing on the returns to the writs awarded them, to have been confined for good cause, will be left, after that, to retain their own counsel or be undefended. The innocent will go free, and the guilty be reserved for legal trial.

With the indulgence of the senate, I will next proceed to examine the third resolution in only a few of its aspects—such of them as I deem most pertinent to the exigency. Much labor is spared here by the just concession of the confederate executive, that civilians are not liable to the articles of war, to the extent that a court martial is competent to try them. The order of the president, through the office of the adjutant and inspector general, of date November 22, 1862, is that the court martial has not such faculty, but is inflexibly confined to the trial of enlisted soldiers and the retainers to the camp. If that concession had not been made, the whole subject of martial law would be let into the discussion, and its possible existence in a free republic, to be contested by argument and authority. I will nevertheless ask to be excused in making one citation. It is a Louisiana case, decided in 1815, in which the district court of that state, by Judge Martin, delivering the judgment, said: "To have a correct idea of martial law in a free country, examples must not be sought in the arbitrary conduct of absolute governments. The monarch who unites in his hands all the powers, may delegate to his generals an authority as unbounded as his own. But in a republic, where the constitution has fixed the extent and limits of every branch of government, in time of war as well as of peace, there can exist nothing vague, uncertain or arbitrary in the exercise of any authority," as martial law is. And in the way of argument, I hope to be pardoned for urging that "*martial*" law cannot exist in these states, as once it did, and that two centuries since, in monarchical and, at that time, despotic old England. We have and can have only "*military*" law, and no martial law, unless "military" and "martial" be used as convertible terms, signifying the same thing precisely and positively Our government is absolutely intended to be a system of laws. It excludes unwritten law. The confederate constitution confers on the congress the power "to make rules for the regulation and government of the land and naval forces." Hence, only, the articles of war, as an authoritative code. No regulations prescribed by the executive, or by military commanders, can lawfully transcend those articles which must

be enacted by the confederate legislature. What in England the mutiny act prescribes as the military law of the realm, would before have been martial law there. So it is here and has been ever since the federal constitution was severally ratified by states enough to form the Union. So it is here now under the provision of the confederate constitution already quoted. The very instant what might be prescribed by the military power, that is, by the president, as commander-in-chief, or by military commanders in the field, as "martial" law, is, by virtue of that authority to prescribe rules for governing the land and naval forces, embodied in an act of congress, it becomes part and parcel of the "military" law. This excludes the possible existence of martial law, if by that expression is meant any thing other than (either beyond or short of) the laws enacted by the congress for the government of the land and naval forces of our Confederacy.

I have thus been diverted from an important point in the present discussion, to which I now return. An expression in the third resolution shows that when the three were written, I knew there was existing legislation which I thought might expire before the proposed instructions would reach our senators. That expression is "to propose a repeal of any legislation by the confederate congress, if any is in force at the time."

Now, Mr. President, although the act approved October 13, 1862, has expired by its own limitation to thirty days after the current meeting of the congress, there may yet be another act authorizing a suspension of the writ, before this session of congress terminates. Already on the 2d of March 1863, a bill for the purpose, and of most exceptionable character, has been proposed in the house of representatives. Therefore it was no sufficient reason that the act suspending the privilege of the writ had expired on the very day or that after the committee asked to be discharged from that resolution, why they should have asked to be so discharged. Besides, that is not all nor the most of that resolution. It proposes, and more importantly beyond, that our representatives in congress shall oppose the enactment of any law to suspend the privilege of the great writ of civil freedom. Then I assume that the committee had some other reason than that the act of October had expired. That other reason I assume was that they believe, and no doubt most ingenuously and patriotically, that some emergency may arise in which the public safety may imperiously demand that the privilege of the writ should be suspended. I take issue with the committee on that high ground. I hold and will attempt to maintain that no exigency can arise

in which the privilege ought to be suspended. I hold and will attempt to maintain that the privilege cannot be suspended, according to the practice which obtains a footing when it is suspended, without abrogating, for the time it is suspended, other provisions of the constitution, essential to a free system, which congress is not enveloped with a shadow of authority, much less invested with the substance of a delegated power, to suspend or to impair; and that if that loose and vicious practice be excluded, a suspension of the privilege of the writ would be much less dangerous, but still not consistent with liberty regulated by law. I hold, but will not take time to maintain, that a vicious precedent has been set by our president, in his late declaration of "martial" law, under authority given him by act of congress to suspend the writ of *habeas corpus.* Scarcely a deadlier blow could be aimed by design (which he did not intend) at the liberties of the people. I hold, but will not take time to maintain, that congress in looking on with listlessness at military arrests of civilians and the transportation of them from one state, where the writ was not denied under their last but now expired act, to another state where it was denied by authority of that act, so that any citizen was liable to be torn from his home, with a charge against him or not, and be denied a trial by jury and any trial at all, have been more derelict to the liberty of the citizen, than the military power which ordered the arrests and the transportation of the prisoners. If I am not right as to the two last tenets which I have asserted, but will not stop to maintain, then Lincoln's despotism is not so much such as we are in the habit of saying it is.

I will refer to those tenets thus asserted, which it is my design to fortify in the reverse order of that in which I have just enumerated them, to wit: first, that a culpable practice prevails when the writ is denied by a law, and the practice makes such suspension more hurtful than would be the legitimate effects of any constitutional suspension: second, that by force of that practice, other clauses of the constitution, which are intended to be universal and continuous, and which secure valuable rights, are for the time rendered unavailable to the citizen: and third, that no exigency to justify the suspension of the privilege, is possible.

It is of first importance, I apprehend, to determine what the privilege of the writ is. It would be interesting to refer to the times in which the privilege of the writ had its benign advent into human society. It would be interesting to refer to its eventful stages to vigor and efficiency, until it found (except lately) its safest port in the federal

constitution. Much display and some profit might be educed from such a review of its history. But I am not speaking for show, but only for effect by the truth in simplest garb. I therefore renew the enquiry, *what is that privilege?* It is the right of the prisoner, for whatever cause he is in custody, and in whatever custody he may be, to have the summary judgment of the law of the land, upon the alleged cause of the restraint of his personal liberty. I am aware that I am quite broad enough in saying for whatever cause the prisoner is confined, and that the statement is too broad for some latitudes. In some countries the law defining the privilege extends to all, except to prisoners convict, or in execution of legal process, or committed to jail for treason or felony. I think that is about right and just. In some of the United States, the privilege is extended to every case of a person confined under any color or pretence of lawful authority. In this state, whose constitution ordains that "the privilege shall not in any case be suspended," it is available to any person showing, by affidavit or other evidence, probable cause that the petitioner is in custody without lawful authority. The award of the writ to the petitioner who is entitled to it, is to the effect that the prisoner shall not be detained to await a trial in regular course of law, but shall have speedier hearing—an earlier opportunity to be confronted with his accusers or the witnesses against him. The remedial office of the writ is to relieve from arbitrary or illegal imprisonment. Such is precisely the privilege. A suspension of the privilege, then, hath this extent, and no more, that the party imprisoned or detained, is compelled to await in prison a regular trial (or remain in the control complained of, awaiting the issue of a suit in equity). The suspension of the privilege simply withholds the quicker hearing and decision of the case, than the statute extending the writ would, if unsuspended, afford. The practice is widely beyond that, if in no case in time of peace, certainly in all cases of military arrests in time of war; so that the person restrained of personal freedom, is denied a trial, when it is only a more summary decision on the cause of restraint, than the law's delays allow, which is actually denied by a constitutional suspension of the privilege of the writ. So it is, I remark on the second point, that the constitutional assurance of a trial by jury, is made void by a practice which usurps so much more despotic power, than the amplest lawful suspension of the privilege of the writ could confer to give continuance to such confinement by military orders. Nor are the rights of speedy trial and by jury, the only clauses of the constitution that are annulled by the license which the military power claims is given it by the late

acts of congress suspending the privilege of the writ. It seems to have been forgotten in these latter times of terrible war *for liberty*, that men's persons are not to be seized, except by virtue of the civil precept issued upon probable cause and supported by oath or affirmation. And by the way, I remark, that in the operations of the civil authority, likewise, it is too much overlooked that the warrant is the constitutional precursor of seizures of the person. *Res detestabilis et caduca.* The practice is detestable in itself and ruinous in its effect on the dignified pride of a free man.

Having ascertained what the privilege of the writ is, and what is the legal extent of its suspension, I proceed to show that it ought never to be suspended. Now, sir, is not the last a self-evident proposition and incontrovertible, unless civil liberty is to be justifiably made the sport of the military power? It is by no one supposed or pretended that the privilege ought to be denied in time of peace. If there is any such one, let him speak. It is only some supposed necessity to exist in time of war, which comes to the mind, as an uninvited and intrusive visitant, of any true friend of the imprescriptible rights of man, or to the mind of any intelligent friend of liberty regulated by law. How can there be such a necessity? Remember, we have seen that the denial of a regular trial, is an abuse of the suspension of the privilege; the privilege itself being merely (though inestimable) a summary judgment of the law of the land upon the sufficiency of the cause of restraint, and in advance of the prescribed and due course of the law regulating the trials of arrested offenders, whether they be in jail or on bail. We will take then the utmost exigency, when war is raging, and man is opposed to man in hostile array and deadly struggle in the field of battle. I will admit, for the sake of the argument, that there are traitors in the bosom of the society in which it is thought the writ ought to be suspended—or disturbers of the efficiency of the army. The more numerous the traitors or the disturbers, the stronger is the reason why the writ should be awarded so that the army may not be taxed and burdened with the task of guarding the prisoners, who would otherwise be delivered over to the civil law to be punished. The more numerous the traitors or disturbers of the army, the more certain it would be that the jails of the civil law would be overflowing, and the army the more required in this event to detach the forces needed in the field, to guard the offenders. But I will take the case where the offenders are fewer, and the military forces large enough for the field and the guard. The persons suspected of offence against the discipline of the military force

or its efficiency, or of giving aid to the enemy must be either innocent or guilty. If they are innocent, all men, everywhere, but bad men, will concur that they should be let go free. If they are guilty, they ought, as all good men will agree, to be tried and punished. The confederate executive has confessed that there is no authority by the military law given to try them. Without a trial, it cannot be ascertained to a certainty which are guilty and which are not. The only way then, either to relieve the army of the burden of guarding the supposed offenders, or to be just to them in discriminating between the innocent and the guilty, is, when the army has arrested them, to have them delivered up to the civil magistrate to be dealt by as the law of the land directs. To overleap the limits of the law—to transcend its authority—for the purpose of taking revenge on a suspected or a guilty citizen, by keeping him or her in prison without a trial, is no less an injury to society, in the moral obliquity of the act, than it is an injustice to the individual. The conclusion is, in the language of our constitution, that the privilege of the writ of *habeas corpus* should not (as it says "shall" not) in any case be suspended. Even if the arrested by the military arm—lawlessly arrested by the physical force of the army in the field—arrested without a warrant or adequate authority of any law—be all guilty, and of atrocious crimes, it cannot fail to be seen in the steadier and stronger light of liberty glowing in the civil code, the penalties of which are ascertained and notorious, that the opinion of Curran in the case of Wolfe Tone is right, when he says: "I do not pretend that Mr. Tone is not guilty of the charge of which he is accused," but the military power, even to punish by imprisoning, cannot have cognizance of any crime imputed to a person not triable by court martial, "while the court of King's Bench sits in the capacity of the great criminal court of the land." Mr. President and senators, our criminal courts are open. They ought not to have been closed. Show me, who can, any reason why the privilege of the writ—the noblest article in liberty's creed—the first, the best, the last—should ever be suspended. The impolicy of its suspension in time of war, no less than its injustice at any time, unless arbitrary power is to take the place of lawful authority, is patent and conspicuous in the adequate *force*, not rightful power, of the army to arrest, and then, of the civil courts to punish. If the civil code is not sufficient to check any manner of mischief to the army, by any who are not subject to the military code, let the penal scope of the former be enlarged. Let the army no longer, as an excuse for transcending its lawful limits, have it to say that civilians

who offend against its rules and orders, are not punishable by the civil code. I entreat, let not the military override the civil law. Separate the military from the civil jurisdiction. Consider, that this writ is the only effectual barrier. Without that, all other civil rights, except the one of the soul's worship of the Deity, in the solitude of the dungeon, as well as elsewhere, are mere abstractions that tantalize; because, without that, all others are incapable, either, of being actually exercised, or, if exercised, incapable of being enjoyed in view of the terror of impending deprivation by tyrannic violence. In the words of another: "In vain does the law proclaim that no man shall be imprisoned contrary to law, if the party imprisoned has no access to a tribunal, to decide the question of legality. In vain does the law promise a trial by peers, if the imprisoned party can have no access to a tribunal where he may demand such trial. In short, without the writ of *habeas corpus*, rights of personal liberty, however solemnly proclaimed, would exist but in name."

Whilst I thus admit, senators, that the penalties of civil law with us ought to be enlarged—that is, that some acts of civilians should be declared punishable offences which are not so now, and other acts be made more severely punishable, it will not be controverted, I suppose, that the protection of civilians, either by the authority of law, or by that other more potent influence, the power of public opinion, is of the first importance. To show that is so, I will not undertake any exposition of details in our condition, to tire more than to enlighten this intelligent body. I will rather to show that, only make a few observations strictly within the tenor of my main argument. There is already power in the army, by physical force, to protect itself; but the civilian is powerless for self-protection against the physical force of the army. The double object which, I apprehend, it is clearly and eminently proper to accomplish, is to give legal sanction, to the proper extent, to the physical force of the military arm, and at the same time to keep that arm in check by helping the weak against the mighty, that is, by keeping the writ of freedom approachable at all times by the petition of the arrested civilian; or, at least, if so much must be yielded to the physical force of the army, to this extent only, that the civilian shall not be deprived of approach and appeal to the civil authority, and be held under military custody, longer than eight days, at the end of which time of eight days after his arrest, the privilege of the writ shall no longer be suspended as to him. The period of eight days is suggested as the

proper limit, because that is the time during which, and no longer, by the articles of war, a soldier alleged to have offended against the military code, can be lawfully restrained without a military trial, unless the call of a court martial for his trial would be detrimental to the service. Will it be contended that a soldier, to govern whom the military law was prescribed, shall not be restrained longer than eight days without a trial, and that the civilian over whom that law does not expressly, and cannot appropriately extend, may be restrained of his liberty, indefinitely, without a trial? There is but one supposable reason that can be assigned in the affirmative of that question, and that is the despot's plea; and it is that for the sake of the public safety, all who do not agree with, and support the ruling authorities, must be coerced into subjection. And what, I pray to know, is the public safety? The power that coerces is the power to determine what it is. That public safety cannot be public liberty which cannot exist without the personal liberty of the citizen. It may be the protection of a rule over the people, hateful to them. It is and can only be a public safety which the usuper deems such condition. He is the only judge of what is public safety, when the lawful authority is transcended. He that transgresses that limit is a usurper. The retention of power, grasping energy to enlarge its encircling domination, is his conception and contemplated impression of the public safety. Every transgression weakens the power of resistance. In the outset, that may possibly not be the design. It will most likely in all cases only be, that bad men are intended to be restrained; but then a dispute will arise, who are bad that ought to be restrained? Then next they who venture to dispute that they who are restrained are bad men, will themselves be restrained for the sake of the public safety. The stronger that party becomes, so must the restrained by the ruling power, be multiplied. The end must be an overthrow of that power, or it will throttle opposition. The public safety can only exist in the sanctity of the public law. The sanctuary of that law is the personal liberty of the individual citizens. Of that liberty the writ is the only sure defence. Whatever guards may be thrown around a suspension of the privilege, and the stronger the guards the better, can at best make such suspension only a little less dangerous to the public safety, because such guards only a little more keep in check the usurping power.

In connection with that train of thought, and as going to show that even if the privilege of the writ is not again suspended, some restraining legislation, or the remonstrating activities of an accused public

sensibility, should be interposed, I state the fact that in localities where the writ is legally available, many civilians are arrested and indefinitely confined by militay orders or military neglect of them in prison, who are too ignorant of their rights, or too indigent, to engage counsel to secure the writ for their relief.

Show, who can, I repeat it, why the privilege of the writ, replete as it is with effectiveness for its specific purpose, and resplendent with centennial triumphs over tyranny, until, in this state, great in freedom and free in greatness, it had almost attained perfection, should now or ever be suspended. With candid distrust of my capacity to maintain any cause to which truth does not lend its inspirations, I challenge any man out of the senate, to this discussion, with honest desire to arrive at the right of it. Show, who can, why, even without the practice which extends a suspension to the denial of regular trials of the accused, the privilege should ever be suspended. Let the enquiry be made to find out why—when the privilege has twice already in the Confederacy been suspended, in less than three years, whilst in the federal Union for more than eighty years it was enjoyed without disturbance once by law—our senators and representatives in the congress should not be constrained, as they do not of their own accord come up, to oppose any suspension of the privilege of the writ. Not only have many of them, if not all, supported the suspensions, but by bills enacted by their votes into laws not guarded as was the bill which in 1807 passed the senate of the United States, but was defeated in the house, although it contained safeguards for the protection of the citizen, of which the late laws were denuded. Not only so, bad enough at that, but these laws so supported, were not only not general in their intended operation, but partial as to localities. They were so enacted that the president of the Confederate States might, as has been done, let the privilege be in full vigor in one state and not in another ; so that the citizen arrested in the state of his residence, and where the offence was alleged to have been committed, and he ought to have been tried, but where the writ was not denied by presidential proclamation, might be transported, as many a one was, into a foreign jurisdiction in which no civil cognizance of his case could be taken, because there the privilege of the writ was suspended. It is proposed, as before stated, that the same law shall be reproduced, revived, without any mitigation of its tyranny or of its contempt of state rights. I will not allow myself to speak of such partial suspensions of the writ, as I think and feel. Men of less enthusiasm in the cause of the practical enjoyment of personal liberty and speedy legal

trials of the accused, might esteem me intemperate. Their minds less fired by a close investigation of the subject—their hearts less touched by contact with the arrested in their piteous plight in prison—might not appreciate the ardor with which I would give utterance to my sober and long considered thoughts. I beg to adopt the language of Edmund Burke, whose power, polish and purity of masterly effort in behalf of liberty regulated by law, has not in modern ages been surpassed. He was speaking of a partial suspension of the privilege. "I confess, gentlemen, that this appears to me, as bad in the principle, and far worse in its consequences, than an universal suspension of the *habeas corpus* act; and the limiting qualification, instead of taking out the sting, does in my humble opinion sharpen and envenom it to a greater degree. Partial freedom seems to me a most invidious mode of slavery. Unfortunately, it is the kind of slavery the most easily admitted in times of civil discord; for, parties are but too apt to forget their own future safety, in their desire of sacrificing their enemies. People, without much difficulty, admit the entrance of that injustice of which they are not to be the immediate victims. In times of high commotion, it is the obnoxious and the suspected who want the protection of the law; and there is nothing to bridle the violence of state factions, but this, that whenever an act is made for a cessation of law and justice, the whole people should be subjected to the same suspension. The alarm of such a proceeding would then be universal. It would operate as a sort of *call of the nation.* It would become every man's instant concern to be made very sensible of *the absolute necessity* of this total eclipse of liberty. They would more carefully advert to every renewal, and more powerfully resist it." So, senators, spoke in 1778, as wise a man as any of us. Consider that extract and your pure minds will be enlightened—receive it into your honest hearts, and your feelings will be liberalized and the activities of your charity will become more comprehensive.

And now, Mr. President, though I have so briefly explored the great subject, I am admonished by the time that I should come to a close. As to instructing our senators, it is too late to talk about the right to do it in this state in which it has so often been done. It has seemed to me, and this has always been my opinion, that instructions ought not to be offered on slight occasions. I would be glad if I could think this such a time and subject. It seems to me otherwise, and most significally so by the facts that the writ has been by two laws denied for a season, and is again proposed, by the congress of these states; and on one of the

occasions, the act of congress to suspend the privilege was mistaken by the president to be an authority to declare martial law to the extent of dissolving the civil government of the state, at least in the judicial department. In my opinion it is high time for this state to speak. I will confess to less desire for the adoption of the last than the other two resolutions together. These remarks in print may be fortunate, under the Divine direction, to convey the instruction to the minds of our senators, though the formal instructions be not carried in the general assembly.

Mr. President, a strong earnestness pervades my thoughts on this subject, although they have been expressed with so little of energy. I feel that unanswerable arguments might be brought to the support of my views. It may be thought by some senators, that I am over zealous; and if so, I trust my zeal will not injure my cause, but find pardon for the sake of its merits. It is a zeal on the subject, which in one aspect or another of it, has swayed my whole life. Yes, sir, public liberty, and, its only solid basis, the rights of the individual citizen, as reserved against the power of the state to invade them, have been the idols of my earthly worship. Neither the acquisition of wealth, nor the taking care of wealth acquired, has been potent enough to draw me away from those objects of my devotion. It was my attachment to those objects, and not any want of respect for the federal Union, *as our fathers formed it*, that attracted me to this Confederacy. I desire that the contrast between this government and what is remaining of that in its recent conduct, shall be made unmistakable at all points of the public policy and political economy. I would invoke our public men in office and out of office, to organize to keep the foundations of ours laid deeply in the broad essentials of freedom. Those essentials, I mean, which our fathers brought into this howling wilderness from the fatherland, a skeleton, and clothed it with consistency, vitality and complexion—brought here a cold statue which, by their warm touch, grew into youth and health and vigorous manhood and excellent beauty. If that is not done, this Confederacy will perish, as its predecessor has. Of all those essentials, personal liberty, of which the citizen shall only be deprived by due process of law, and its restoration to him, if he is innocent, by a speedy judgment of the law on the cause of his arrest and restraint, are the most indispensable. Let all that be done, and all will be well. If that is done, LIBERTY will again resound in the eloquent tones of our Henry, and reverberate in philosophic accents from the grave of our Jefferson.

Then shall virtue in the public councils revive to the standard of Nat. Macon and John Robertson; it can go no higher. Then shall the power of mind reassert its rightful ascendancy in the grandeur of the genius of Gaston: felicitous man, of the unrivalled character and capacity to fill and fulfill both the legislative and judicial office, without in either an equal adequate to only one of the stations. Then, the observance of written constitutions, in practical legislation, shall become our crowning honor, and collect its inspirations from the trusty tenacity of John Randolph and the sturdy constancy of John McPherson Berrien. Then, ours shall be the central orb of the unfolding systems of man's advanced civilization. Then, the outgoings of the morning will rejoice in the glad sunlight of that orb; and the incomings of the evening will be secure and satisfied in the lofty and solid safeguards of liberty regulated by law, and that law shall be dispensed by intelligence and virtue. From age to age, it will be seen, all the more clearly, as one series of events succeeds another, how firm a foundation is laid for undoubting confidence in the disposing, by the Supreme Wisdom, of man's proposings.

Let us not have to lament that in the struggle to become so happy a people, we suffered personal liberty at home to be only a name. I trust not. Let not the shadows of tyranny become too deep and dense. Is it not enough that twice the dismal shade has rested over us! I believe it is beginning to be so determined. Column after column in echellon, of men not in the army, but in civic garments clad, is coming to the shrine of *liberty* to do homage to the great writ of freedom. The resolution to resist its third suspension for a limited time, in an under current, begins to flow. On the political horizon the streaks of light are darting, that are destined to become brighter and broader to the full lustre of a cloudless sky.

On motion of Mr. Collier, the resolutions were laid on the table.

Note.—It is proper to state that the first resolution was referred in the house to the committee for courts. It slept before them for several weeks. I enquired of the chairman if it had been considered, and was told it had not been before them at all. Another copy was made out, or the lost one was found, and put before that committee. Soon afterwards the resolution was in some way transferred to the committee on confederate relations, as being the more appropriate one. Before this committee it remained unadvanced, if not unattended to, until the session of the general assembly closed. No opportunity was afforded the house to take a vote on it. The second and third resolutions were not pressed to a vote in the senate, because the first was not acted on in the house. Besides, I concluded that it would be all the more to the credit of the great principle of civil supremacy, if the little agitation I had given the subject should impress its potency, in a time of war, on the confederate congress. The effect has already been to retard, if not to prevent, another act of congress to authorize another unguarded suspension of the writ. Already my agitation of the subject had put a stop to court martial trial of civilians. The triumph of the principle will be complete, when the arrest of the civilian by military orders shall have been properly guarded, and the arrested shall be required to be given up promptly to the civil magistrate for lawful trial. I am happy that the opinion is spreading that there is life in the civil law yet.